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THE DANISH JUDICIAL CODE.*

A STUDY IN COMPARATIVE LAW.

I. INTRODUCTION.

The great difference existing between Anglo-American and continental European law can, in the main, be referred back to their differences in the matter of procedure.

English-American procedure has developed out of the inquisitions introduced by the Plantagenet kings, in other words, criminal procedure is its basis.

Continental European procedure has developed out of Roman rules of procedure as interpreted and practised by the ecclesiastic courts in civil matters. Equity practice is its basis.

The basic principle of Anglo-American law of procedure is that true principle of criminal law, that accusations are untrue in contemplation of law, until they have been proved. Transferred to the realm of civil procedure, this means that allegations are to be contradicted, and are untrue in contemplation of law until they have been proved.

The basic principle of continental European law of procedure is that true principle of equity, that the truth must be stated and the case decided upon the true state of facts; and as neither party is over likely to tell the naked truth, the court must make inquiry of its own motion. Transferred to the realm of criminal procedure, this means that the accused becomes a witness against himself, it leads to the inquisitorial form of criminal procedure.

In the course of the last one hundred years the two systems have greatly influenced each other. It is now many years since the pure inquisitorial system of criminal procedure held sway anywhere. Denmark did not abolish inquisitorial criminal procedure until 1916, but there it had never been practised in its pure form; as long as it did hold sway (less than one hundred fifty years) a defensor was always appointed for the ac-

* Of April 11, 1916.

cused and paid by the county or state, unless he chose to select his own counsel. Still, by its very nature it could not help leading to abuses in a number of cases, and attempts to get rid of it have been continuously made for the last seventy years; but they did not succeed until 1916.

On the other hand, continental civil procedure has continually influenced Anglo-American forms of procedure. The old formalistic rules are dying out, there is a constantly increasing tendency to find out what the quarrel really is about; even the rules of evidence, the citadel of true English law of procedure, are relaxing from day to day.

As a result, the two systems, both as regards criminal and civil procedure, have been coming nearer and nearer together for a whole century.

Still, there are many differences left. What remains of the rules of evidence is one of them. But the main difference is to be found in the preparation of cases, in the pleadings and other preliminary steps which must be taken before the trial, also in the nature of the trial.

The following remarks refer to civil procedure only:

As to pleadings, in brief it may be said that, in English-American law their ideal object is to "frame an issue" to which may be answered yes or no; while in continental law, their object is to state, how the matter originated, how it developed, and what the mutual contentions are. In English-American law there is no step between the pleadings and the trials, while in continental law there generally is a preliminary hearing of the parties themselves, where they are confronted with each other and questioned, the one by the other or by his attorney, and by the court; the object being to sift down to the narrowest point the matters really in dispute which require proof. In continental European law the parties are considered and treated as parties with the duty to tell the truth. As a rule they are not sworn, but if found to have been lying, they are prosecuted and punished, not for perjury, but for "false declarations before a court."

In other words, in English-American law, the trial involves, both the development and the proof of the case, while on the continent the case has been developed before trial, and the latter reduces itself to the furnishing of proof of a few contested points. The story of the case is never told at the trial, it has been told before; the trial is for the purpose of "trying" whether the story told is true.

Under the continental system, the preparation of the case for trial takes longer time and more work, but the trial itself takes much less time, and as far as expeditiousness is concerned, both systems are about equally good. However, the manner of trying cases on the continent, by necessity (since the elimination of the purely formalistic rules) does away with almost all rules of evidence, and new trials granted on account of errors in admitting evidence are practically unknown; when they are allowed, it is almost in all cases by reason of after-discovered evidence.

The Code and Its Divisions.

The new Danish Code is probably the latest systematic attempt to establish a form of procedure, both civil and criminal, built upon modern principles and with the avowed object of doing justice without interfering more than absolutely necessary with the individual freedom of man.

The going into effect of the code depends upon the enactment of two supplementary laws both of which were enacted on the same day as the code. Thereupon the Minister of Justice must publish a notice to that effect in the *Statstidende* (Official Gazette), and six months thereafter the code becomes effective. So it is probably working by this time.

The code is divided into five books, ninety-five chapters and 1043 sections.

The titles of the books are as follows: Book I. The Judicial Power, &c.; Book II. Rules Common for Civil and Criminal Cases; Book III. The Civil Procedure; Book IV. The Criminal Procedure; Book V. Final and Temporary Rules.

The Courts.

All of the courts have jurisdiction in both civil and criminal cases, but in some of the larger jurisdictions there are separate judges for criminal cases.

The courts are: One Højesteret (Supreme Court), sitting in Copenhagen; two Landretter (Superior Courts), one called the Eastern sitting in Copenhagen, and the other or Western, sitting in Viborg. There are eighty-nine courts of first instance, one of them for Copenhagen, the others distributed over the cities and counties of the country. In addition there is the Admiralty and Commerce Court of Copenhagen. All of these courts and their procedure are regulated by the code; outside the code are The Court of Impeachment (Rigsretten), the Sessions (deciding questions relating to duty to serve in the army and navy), the ecclesiastical courts and the military courts, likewise consular courts, as well as certain industrial courts organized for the purpose of settling labor and similar disputes.

The Supreme Court is composed of a president and twelve associate judges. Nine judges must take part in the hearing and deciding of each case; when less are present, the president calls one or more judges of a Landret to sit in the court and participate in the decision.

The Eastern Superior Court (Copenhagen) has a president and seventeen associate judges; the Western a president and twelve associate judges. Three judges must participate in the hearing and disposition of each case.

The Admiralty and Commerce Court consists of a president and a vice-president who, like all other law judges, are appointed by the king, and of a certain number of lay members elected by certain marine and commercial bodies of a semi-official standing. Each case must be heard by the president (or vice-president) and four or two lay judges, according to its importance.

The eighty-nine courts of first instance, as a rule, have but one judge. But that of Copenhagen has a president and twenty associate judges. Of these two are sheriffs and two are probate judges; each of the remaining presides in one of the sixteen departments of the court. General rules for the distribution

of the business are framed by the president with the approval of the minister of justice. Within these limits the president distributes the business; he also distributes the judges, having first consulted them; and when necessary he can order a judge to assume the presidency over another department than his own.

In Frederiksberg there are to be three judges, the distribution of the business among whom is to be fixed by royal decree.

All the other courts have but one judge, except that where the population within the county has reached 40,000 according to the last census, a separate judge is to be appointed for the administration of criminal and probate cases (including bankruptcy). At present there are nine such jurisdictions.

All of the civil judges of the courts of first instance are also recorders of deeds, as all documents (or short abstracts of them) must be read in open court, before they can be recorded, and the certificate of record must set forth in detail all objections to the title, not mentioned in the document itself.

Attached to each of these courts is a court-secretary or scrivener, corresponding to our prothonotaries or county clerks, but having as well the actual recording of real estate and other papers, and searches in charge.

Each court is its own sheriff, and has jurisdiction in all probate and bankruptcy matters, except in Copenhagen where most of the latter come under the jurisdiction of the Admiralty and Commerce Court. The sheriffs have nothing to do with the execution of criminal judgments; this is in the hands of administrative officers.

There are no juries in civil cases; the judges passing on both the facts and the law.

The lawyers are not authorized to practise by the courts; but are appointed by the Minister of Justice, and can demand such appointment upon proof furnished that they possess certain qualifications. About these qualifications, &c., further hereafter. The courts have no power summarily to disbar or suspend a lawyer. The most they can do is to fine him for what we would call contempt of court, when committed in the presence of court. Where his behavior has been such that a fine is not

adequate punishment, he must be prosecuted under a separate case and in accordance with the provisions of the criminal code; his punishment may include suspension or perpetual disbarment, as the case may be. The necessary discipline is obtained in a different way, of which more hereafter.

Both sides of the bar, the judges and the attorneys, are equally independent of each other, and even the outer arrangements of the court rooms indicate this. The attorneys actually talk down to the judges, because these do not sit on a raised dais; in the Supreme Court this is even more so, because the advocates ascend a rostrum from which they address the court.

Rules Common to Civil and Criminal Procedure.

Among the rules common for both civil and criminal cases the following may be mentioned:

All cases are to be heard orally; writing is to be used to the extent fixed by law, only. Arguments are to be made extempore, and not by reading or dictating of speeches. When any reading has to be done, the presiding judge decides who shall do it, except where otherwise ordained by law.

Danish is the language of all the courts, and sworn interpreters must be employed in the cases of all persons not able to speak or understand the Danish language. However, in civil cases in the lower courts when neither party demands an interpreter and the judge considers himself sufficiently conversant with the foreign language in question, the calling of an interpreter may be dispensed with. All papers produced, written in a foreign language, must be accompanied by translations, made by an officially authorized translator.

Where deaf, dumb, or deaf and dumb persons are concerned, either persons familiar with the sign language must be called in, or writing must be resorted to.

All proceedings are under the leadership of the presiding judge; he decides the order in which the various steps must be taken, and sees to it that proper order and decorum are maintained. Persons not behaving themselves, whether lawyers or

others, may be ordered out of the courtroom and fined for misbehavior. The police shall be at his command for the carrying out of his disciplinary measures. Where there is but one judge, he has the same powers.

The rules for how, when and by whom service of process must be made are not of general interest, as most of them are founded upon local conditions and long established local custom.

A witness is not sworn before testifying, but after having testified. When called, the presiding judge admonishes him to tell the truth and calls his attention to the penalties for perjury and for false declarations before a court. When the examination is completed, the questions and answers are read to the witness and he is asked whether he is prepared to take his oath to the truth of his testimony. A witness has then the right to make corrections. When the testimony has been got into final shape, the witness must make oath to its truth, but only if one of the parties demands it; in criminal cases the witnesses are always sworn. But in all cases where the court finds that the matter in question either has been sufficiently proved by other testimony, or is irrelevant, or, if in a criminal case, that it cannot have any influence as to the conviction or acquittal of defendant, no oath shall be accepted.

The following persons must not be sworn: Children less than fifteen years old; feeble-minded persons; persons convicted of, or now indicted for perjury; persons having been found guilty, as principals or as accessories, in the act concerning which the case has been instituted.

In addition, the court may refuse to take the oath of a person whose credibility is strongly affected, either because of his notorious criminal life and character, by reason of his relation to the case or to one of the parties, or on account of his mental condition (intoxication, &c.) at the time when his experience was gained, or for analogous reasons.

The oath is taken according to one of several formulas adapted to the various forms of religious belief; where the religion of the witness does not allow him to take an oath, or

where he has no religious belief, then he is affirmed in accordance with another certain formula.¹

What under the old form of procedure might be called the Danish jury, the so-called "*Syn og Skön*" (view and conclusions) has been materially altered by the new code.

Heretofore "*Syn og Skön*" might be used as evidence. Either of the parties might, after notice to the other side, move the court to appoint two competent men to view a thing or situation of importance and report to the court, where they were sworn after having been subjected to direct and cross-examination. But the case might also, by the judgment, be made dependent upon the result of a "*Syn og Skön*." Such judgment would read, that defendant pay to plaintiff such an amount as two impartial men, appointed by the court on motion by the plaintiff, shall report to be due, and which report they trust themselves to confirm by their oath in open court. In the latter case, the "*Syn og Skön*" was in effect a jury.

¹ As to witnesses, it is to be remarked, that ministers of the gospel are prohibited, against the protest of the person in question, from giving testimony about what has been confided to them in their quality as ministers.

Lawyers are prohibited from testifying about anything that has been told them in confidence.

Doctors and employees of the royal lying-in-hospital in Copenhagen are prohibited from giving testimony concerning women having been delivered therein, except where the case concerns the killing of or other criminal act against the child.

The court may, however, order all of the persons named to give testimony, where the court considers it necessary in order to prevent a supposedly innocent person from being convicted. But in all such cases the evidence must be confined as much as possible, after the doors of the court have been closed.

Public officials having the duty of silence concerning what they have learned in their office, must not testify concerning it, unless permission is given by the proper higher officers, or, in case of members of both chambers of Parliament, consent is given by both the president of the chamber in question and by the Minister of State.

The court must, *ex officio*, see to it that such forbidden testimony is not given, and when it appears evident that a desired subpoena is wanted for the purpose of taking such testimony, the court must refuse to grant the subpoena.

Husband and wife may refuse to testify concerning communications between them, provided such testimony may work injury (*Skade*—injury in its widest sense) for the witness or the spouse. Any person may refuse to answer questions, when such answer would expose the witness, the spouse, parents or children, to public contempt or loss of estate or great pecuniary loss, or to other injury of an analogous character. But in criminal cases, such refusal may be made only where by answering the witness would expose himself to public contempt or loss of estate.

Under the code, however, all "*Syn og Skön*" are evidence. The first-named form may still be used, but the latter form has been abolished. In other words, the court cannot of its own motion supply evidence which either party ought to have furnished.

Qualifications of Judges and Attorneys.

Before proceeding to discuss the actual rules of procedure, it may be well to state, what are the qualifications necessary for judges and attorneys-at-law, and how the latter are organized.

There are in Denmark two courses for the training of lawyers. One, called the complete legal course, and the other known as the common legal course. In order to enter the first, one must have completed a full college course and have obtained the degree of A. B. and in addition must have taken the degree of Ph. B. at the university. The Danish equivalent for bachelor is *candidatus*. In order to enter the second course, one must have passed an examination about corresponding to the final examination in the better class of our high schools, and no degree of Ph. B. is required.

The degree of LL. B. (*candidatus juris*) may be granted *cum laude prae ceteris*, *cum laude*, *haud illaudabili* (first or second degree) and *non contemnendus*, but when the latter

No witness has the right to refuse to answer the question whether he has ever been convicted of a criminal offense.

Where it is apparent that the duty to testify does not apply, the court must call the attention of the witness to his right to refuse.

There are certain other exemptions from the duty to give testimony, the purpose of which is to protect the freedom of the press, but they are so intimately connected with the press-laws of the country that any detailing of them would be without interest.

Witnesses not answering to a subpoena duly served, are fined from 10 to 200 Kr. in civil cases, and from 10 to 400 Kr. in criminal cases; in addition the court shall order payment of all costs of a continuance caused by the absence. (One Krone equals \$0.2656.)

Under special circumstances a bench warrant may also issue and the witness be brought into court; if, by the time the witness is produced, the case has been continued, the court may order the witness locked up until he be produced at the next hearing and gives testimony. But under no circumstances may a witness be confined for more than six months, whether continuously, or at different times. Fines, *etc.*, may be remitted when good cause therefor is shown.

Similar rules apply where the witness appears but, without legal cause, refuses to answer the questions put.

"epithet" has been gained, no legal career is open to the graduate. In the common course, candidates are graduated with "first character" or "second character"; those obtaining the latter are also practically excluded from a legal career.

No person can be appointed judge of a court unless he is a *candidatus juris*, and has graduated *cum laude*, or better. There are some exceptions, under which graduates *haud illauidibili primi gradus* may be appointed judges of the courts of first instance, but these are unimportant.

All judges are appointed by the king for life and cannot be removed prior to their seventieth year, except by judgment of a court in a criminal proceeding against them; the penal code specifies the circumstances under which a judge may be adjudged to have forfeited his office. All judges not removed by judgment obtain a pension upon their retirement, graded according to their salaries and to their years of service.

As a matter of course, no person under full age, or of ill repute, or who is insolvent, may be appointed a judge.²

Judges are not hand picked, either by a political party or by the bar, or by the minister of justice for the time being. The race is open to all qualified persons. When a vacancy occurs, there appears a notice in the Official Gazette that such and such an office is vacant, stating what are the emoluments, and requiring all qualified candidates to file their applications with the minister of justice prior to a certain day. The list of

² In order to be appointed a judge of the Supreme Court the candidate must have served for three years, either as a judge of a Landrét, as president of the Copenhagen city court, as president or vice-president of the Admiralty and Commerce Court (or have held corresponding positions under the old dispensation), as attorney-general, attorney of the Supreme Court, chief of department in the Central Administration, or as ordinary professor of jurisprudence at the University of Copenhagen.

But, before he is commissioned, he must hear and vote in four actual cases brought before the Supreme Court, at least one of which must be a civil case. If thereupon the court recommend him, he is appointed.

In order to be appointed judge of one of the "*Landretter*," the candidate must have the same qualification (but without being tried out by the court) or at least have been, for the same period, either judge of a court of first instance, chief of police, deputy attorney-general, attorney of the Landretter (Superior Courts) or have been an officer of the central administration under royal commission.

In order to be appointed judge of a court of first instance, the candidate must have the general qualifications for the office of judge.

applicants is open and can be inspected by anybody interested. The bar, not being the servants of the courts, do not stultify themselves by getting up lists of endorsers of two or three rival candidates (possibly also because the courts have no favors to grant their friends in the line of masterships or the like). Without doubt, some rope pulling is occasionally performed, especially in appointments for the lower courts, but we believe that the appointment of an incompetent or undesirable judge to any of the Superior Courts or to the Supreme Court through "influence" is practically unknown.³

No man or woman can be appointed attorney until he or she is twenty-five years of age. The applicant must be a citizen,

³ *Attorneys*—There are, so to speak, three layers of lawyers in Denmark. (1) Those appointed to practice before the Supreme Court and all other courts of the country. These must be *candidati juris* graduated *cum laude*, or better; they must have practiced for at least three years as Landret-attorneys, or for the same length of time have been deputy attorney-general, judge, or professor of jurisprudence at the University of Copenhagen. In addition they must have pleaded at least three cases before the Supreme Court (two at least of which have to be civil cases) and have obtained the court's certificate of efficiency. They must themselves obtain these cases, and the court will allow them to appear in them, provided they produce a certificate from the minister of justice to the effect that if they meet with the court's approval, they are otherwise entitled to the appointment. Having been turned down once, a man may try once more, but never again. Attorneys of the Supreme Court must have their office in Copenhagen and nowhere else.

(2) Then there are the attorneys appointed to practice in the Landretter, the Admiralty and Commerce Court and all inferior courts. These must also be *candidati juris* graduated at least *haud illaudabili primi gradus*. These must have practiced for three years, either as attorneys of the lower courts or as duly authorized assistants of an attorney of the Supreme or Superior Court. Of course, an attorney qualified to try for appointment to the Supreme Court Bar, has the right to try for that of the Landretter.

Before receiving their appointment they must likewise have pleaded three cases (before a Landret). They must have their office in either Copenhagen or Viborg, and nowhere else.

(3) Finally there are the attorneys of the courts of first instance. Anybody qualified to be appointed attorney of the higher courts may be appointed to the common pleas. And in addition such *candidati juris* who at their graduation have obtained the character *haud illaudabilis secundi gradus* as well as all graduates of the common course having obtained "first character," provided they have served for three years as duly authorized deputies with some practicing attorney, are entitled to the appointment when they measure up to the general qualifications. They must have one office in a fixed place, and no more.

As will be noticed from this, fresh graduates are not let loose on the communities to practice in their own name and upon their own responsibility. After having served for from three to six years for *Leah* (their diploma) they must also serve three years for *Rachel* (their commission).

must not be a bankrupt and must prove by reliable testimonials that he has led an honest life.

Before the commission is handed over to the attorney, he must file with the minister of justice a solemn written declaration, to the effect that in the cases entrusted to him he will act with diligence and fidelity and that, generally, he will conscientiously observe all the duties of an attorney.

Lawyers so appointed have a monopoly in appearing and pleading for others, but every party to a suit has the right to appear *propria persona*. However, if it should appear that any person tries to make use of this permission for the purpose of practising law (by so-called *mandatarii* powers of attorney, by *pro forma* assignments and otherwise) such person shall be fined (maximum Kr. 500); he loses his right to whatever compensation may have been promised him, and if his fee has been paid, it can be recovered.⁴

As stated before, the courts may fine lawyers for unseemly behavior. In all other cases, a criminal action must be brought. Courts cannot summarily suspend or disbar a lawyer. This can be done only by final judgment in a criminal case, or as far as suspension is concerned by the Lawyers Council. Appeal from a judgment disbarring an attorney does not act as a super-seedeas.

If an attorney be declared bankrupt, or if a guardian is appointed for him, his right to practise becomes automatically suspended, and is not regained until he proves that he has paid his creditors in full, or that they have accepted a composition, or that the guardian has been discharged.

Organization of Attorneys.

All attorneys form *ipso facto* a corporation, called the "Society of Attorneys." This society is governed by a board of twelve members, six of whom are elected by the attorneys of the Supreme and Superior Courts and the other six by the attorneys of the common pleas. This board, called the Lawyers

⁴Contingent fees are specifically allowed; also agreements to pay a higher fee in case of success. What is a reasonable charge for services rendered, is decided, in cases of dispute, by the Lawyers' Council as mentioned *infra*.

Council, is elected for four years, and the members may be re-elected. It selects its own officers from among its members and meets from time to time, as business may require. By-laws for the society and the council may be adopted, but must be approved by the king. Meetings of the society are called upon fourteen days notice printed in the Official Gazette. One-fourth of the members of the society as well as the president of either Landret may demand the calling of a meeting of the society.

The council is invested with wide disciplinary powers. It shall keep a general supervision over all attorneys, and can proceed against any member of the society, either of its own motion or upon application.

The council may reprimand an attorney; may prohibit him from undertaking specific cases or from carrying on a particular form of business, may fine him to the extent of Kr. 300 and may suspend him for a fixed time, not exceeding one year. In all cases the attorney concerned shall be given ample opportunity to be heard and to defend himself, either orally or in writing.

All fines not exceeding Kr. 40 are non-revisable, but in all other cases the attorney concerned can within three days appeal to the Landret. His case is then heard by at least five judges behind closed doors.

The council has the supervision of all deputy attorneys preparing themselves for admission to a Landret or court of common pleas, and all applications for appointment as such are sent to it for report before the appointment is made. Without the approval of the council the appointment cannot be made, except in extraordinary cases. The report of the council is asked concerning the following facts: Whether the candidate has actually participated in the conduct of court cases; whether he has been constant in his attendance at court; and whether he is a man of good moral character.

Law Partnerships.

At the trial of cases in the Landretter, Admiralty and Commerce Court and the Supreme Court the attorney of record must appear in person or by some other duly qualified attorney. In the common pleas he may appear by his deputy.

Under the old system, it was in the Supreme Court only, that the attorney was compelled to appear in person; in all other courts and matters he could appear by his deputy, or authorized law clerk.

This innovation will probably lead to the formation of law partnerships, a thing heretofore—even if not unknown—rather unusual in Denmark.

Comparative Observations.

In making a comparison between our system and that of the Danish Code, as far as here set forth, two differences are very evident.

The first is, that the Danish system knows of no juries in civil cases, and that the new code has abolished what little trace there was left of it in the older system. The lay judges of the Admiralty and Commerce Court are associate judges and not juries, they do not represent the general opinion of the community, but the expert opinion of certain callings.

In other words, the judges of the Danish courts have the same powers over facts as have our equity courts, and they cannot even send a disputed question of fact out to be decided by a jury, as there is none. There is no difference between law and equity; all law must be administered equitably according to law.

When we, in a later part of this article, come to the actual forms of procedure followed, the result and consequences of this difference will become more evident.

But, as far as we have gone, the most pronounced difference in the two systems appears in the position of the bar. The latter is as independent of the judiciary as are the doctors or ministers of the gospel; and they are equally independent of the minister of justice and of the administration generally. Possessing the legally required qualifications, they have a right to be appointed, a right which they may enforce in the courts. The two higher courts may keep incompetent persons out of the bar practising before them, but in case they should try to use this right for chicanery, they would find themselves in such

hot water that they would never try it again. A man having once passed, holds his appointment entirely independently of the courts. They cannot interfere with him, except by fines for unseemly behavior, until he stands before them accused of a criminal offense. There are no plum trees to be shaken, anywhere within the whole system, and consequently no rewards to be handed out.

All this works for an independent bar, and the high requirements for admission to the bar work towards the utmost decorum in the behavior of both bar and bench. There is no impudence on the part of the bar, no heckling from the bench. There is no kow-towing on the one side, and no omniscience or aloofness on the other. The attorneys come into court charged with the duty to their client, to the court and to themselves, openly to state the whole case and sincerely to argue the points of law involved. The court's duty is to hear the cases (the statements, the evidence and the arguments) and, after a full hearing, to decide them.⁵

Owing to the manner of their appointment, no judge is beholden for his place to any member, clique, organization or club within the bar. He has been appointed for merit and holds for life, and is not, for the sake of re-election, gratitude, or otherwise, bound to treat one member of the bar differently from any other member.

The necessary discipline of the bar is exercised, not by the courts, except in a few aggravated cases of bad manners, but by the bar itself, and consequently much more effectively. The Board of Censors being a select committee of the whole bar of the whole country, personal spite, jealousy or chicanery have little chance of winning out.

On the other hand, all of the judges having been appointed for life, and the bar being as independent as the judiciary, both have a tendency towards beaurocratic conceit, and in the case

⁵ In Denmark, a lawyer pleading before the bar does not address the judge or the judges, he does not address "Your Honor" or "Your Honors," but invariably, in the lower courts, addresses "The Honorable Court," in the superior courts "The Right Honorable Court" and in the Supreme Court "The High Court."

of small jurisdictions with one-judge courts and a limited bar, where one or two members are apt to become over-prominent, this tendency does occasionally show itself in an offensive manner. It is not in Russia only, that God is in his Heaven, and the Czar far away. But, generally speaking and from experience, it may be said that in the courts of Denmark, with very few exceptions, there is the utmost good feeling and courtesy shown by the bench towards the bar and *vice versa*.

II. CIVIL PROCEDURE.

Forum.

The Landretter have original jurisdiction in all civil cases, except such as, according to law, belong to the Admiralty and Commerce Court, or to the courts of first instance.

These exceptions are: As to the Admiralty and Commerce Court, all admiralty cases as well as all cases arising from business transactions and employments in trade and manufacture, provided they arise within Copenhagen, or by agreement between the parties have been submitted to this court. This court also has jurisdiction of most bankruptcy cases occurring in Copenhagen.

The courts of first instance have original jurisdiction in all cases where the parties agree to bring actions before them. Such agreements are valid in all cases, except where the question is about the appointment of guardians, or in certain cases about suits to quiet title and to obtain "mortification" of obligations and mortgages, or other liens.

In addition the courts of first instance have original jurisdiction in the following cases: Where the claim is for money or other thing of value of not more than Kr. 300, and arising among private parties; where the claim is for taxes and similar public claims where the value does not exceed Kr. 300; cases concerning easements and servitudes; cases arising on negotiable instruments without regard to the amount claimed; cases arising out of matrimonial relations including divorce; "mortification" cases, where they are not excepted as stated above; suits to quiet title (with the same exception); cases brought to establish the

paternity of an illegitimate child, or the duty to contribute to its support; certain specific cases for satisfaction of claims of record; and such criminal cases as, according to law, are left to the injured person to prosecute.

If the case is properly brought before the lower court, this court does not lose its jurisdiction because a counterclaim beyond its jurisdiction is set up, and no accrued or accruing interest is counted in establishing the amount of the claim; but the court cannot give judgment for the counterclaim where such judgment would exceed \$300. In such cases the counterclaim acts as a set-off only.⁶

Cumulation, Intervention, &c.

Provided the court has jurisdiction, a plaintiff may cumulate in one suit all of his claims against the same defendant, even when they arise from different states of facts, and have different foundations in law.

In all cases properly brought against corporations, claims against their directors and officers, arising from the same transaction, may be taken cognizance of, even when the court is not the proper forum of such officer.

⁶As a general rule, all cases must be brought before the court within the jurisdiction of which defendant has his residence; if he has several residences, then before the court of any of them.

A citizen having no fixed residence may be sued in the court of his domicile, or, when his domicile is not known, in the court of his last-known domicile.

Danes in foreign countries, but not subject to the jurisdiction of the courts thereof, may be sued in the court of the place where they continue to maintain a residence; and if they have none, then in the proper court sitting at Copenhagen.

All corporations may be sued where their principal office is located and, failing such, where any of their directors may reside.

In cases against the state, the action must be brought before the court of the jurisdiction in which is the office of the public officer against whom, on behalf of the state, the summons must be taken out; if he have no office, then before the court of his residence.

Cases concerning ownership or estates in real property must be brought before *forum rei sitae*; cases to enforce liens on real estate may be brought in the same court. Where the property lies in several jurisdictions, the location of the dwelling house determines the proper forum, and when there is no dwelling house any of the various courts may be selected.

Cases by *cestuis qui trust* against trustees, and *vice versa*, are to be brought before the court of the place where the trust is being, or has been, executed, or where account thereof must be rendered.

Interventions, in the interest of one of the parties as well as of the intervener, and admissions are generally allowed.

The court has the right, *proprio motu*, to cumulate cases which might have been joined from the beginning; it may also divide a case into several in such a way, that various questions of fact and law are separately pleaded, proved and decided.⁷

Conciliation.

Coming now to the procedure to be followed in civil cases, we first meet the requirement that conciliation must have been tried, before the action can be proceeded with.

Such attempts at conciliation must be made in all cases, except the following: In cases of counter claims; in suits brought on negotiable instruments; in cases by or against the state or its officials; in cases of great necessity (to be decided by the court); where publication of the summons has to be resorted to; when defendant is out of the country and has no known representative within the country; also in certain cases of attachment.

Cases concerning contracts which were to be executed in a certain place may be brought in the court of such place; in certain cases, if defendant is found within the jurisdiction of such court, in others, whether he is there or not.

Such cases where the action is for the recovery on account of torts may be brought where the tort was inflicted.

When several persons have to be joined as defendants, the suit may be brought in the court of the residence of any of them.

By the consent of the parties, and without the consent of the court being required, any case, not specifically excepted, may be brought in any court having general jurisdiction over it.

Foreigners may be sued in the court which, according to the above rules, would have jurisdiction in cases of subjects. If there be no such court, and special treaties do not forbid it, a foreigner may be sued wherever he may be found or has property.

⁷Where several parties are joined, either as plaintiffs or defendants and, at the call of the case, one or more of these do not answer, the party appearing and answering is considered to represent all.

The court is not required to inquire into the competence of the parties; but may refuse to go on with a case when there is intrinsic evidence that one or both parties are not competent or capable of suing or being sued.

Every party has a right to conduct his own case; if the case is brought before a court of first instance, the court must, when necessary, assist him in the proper presentation of his case. But in the Landreter and Supreme Court, if the party shows himself unable, either to frame pleadings which can be understood, or to develop his case with the necessary order and lucidity, the court may grant a continuance and direct the party to employ

There is a separate conciliation commission for cases between masters and domestic servants; and in certain cases the court acts as conciliation commissioner before it hears the case judicially; also, for cases coming under the jurisdiction of the Admiralty and Commerce Court there is a separate commission of experts.

All other cases must be brought before one of the ordinary conciliation commissions, each consisting of two persons, elected in a specified manner, and each of which often has jurisdiction over several judicial districts. The parties agreeing, they may appear before any of these commissions without regard to what court will have jurisdiction of the case.

As a general rule the parties must appear in person, but when lawfully prevented, any "good man," when duly authorized, may appear for them. The former prohibition of attorneys has been left out of the new code.

All of the proceedings before the commissions are conducted behind closed doors. When an agreement is reached, it is to be entered *in toto* on the minutes of the commission and must be signed by both parties. Whether a compromise entered into is binding in law, is decided on appeal to the court of first instance, or, if entered into before a court, to the regular court of appeal. A writ of execution may issue upon the agreement reached.

*Rules of Court.*⁸

Before proceeding to an enumeration of the steps necessary to carry a suit to final judgments, the code contains certain general rules, most of which would be covered by what we call rules of court. It may be stated here, that rules of court in

an attorney. Such directions can not be appealed from, and if they are not followed, the party in question is considered to have defaulted to the extent covered by the directions.

The right of a party to a suit to appear *p. p.* includes the right to have one's husband and certain other near relatives appear; likewise persons in the steady employ of the party, provided the employment is not for the specific purpose of appearing in law cases.

⁸Of all cases brought before it the court must keep a list, and for each day a separate list must be tacked up in the court's anteroom not later than the day before. The president judge takes up the cases on the day's

our sense of the expression are unknown, and the courts are given no power to formulate and enforce such.

As a matter of course, the rules contained in the code do not include any forms, nor any such rule as that any particular instrument must be in a certain form. Under Danish law no worship of the letter takes place.

A case is considered to exist as soon as the summons has been left in the court's office for the fixing of a day for hearing; but it is not properly under the jurisdiction of the court until the summons has been served.

The plaintiff may withdraw his case at any time prior to his final demand for judgment at the final hearing; such withdrawal does not, however, prevent separate judgment for counterclaims presented. After the time mentioned, the consent of the defendant is required.

Each party must set forth his demands distinctly, and must distinctly and without equivocation disclose all the facts upon which he founds his demands; he must likewise, distinctly and without equivocation, express himself concerning the facts disclosed by the other side and such demands for discovery as the other side may have made.

The court, considering all the circumstances of the case, decides the effect of failure, both to answer distinctly such demands for discovery, as well as to contravene the facts alleged by the other side.

When the court finds that the pleadings or declarations of the parties suffer from uncertainty, equivocation or incompleteness, it may call the parties before it and by questioning try to obtain a better elucidation of the case. Any of the judges of a collegiate court has this right. Should the party fail to answer such questions, or give evasive answers, or fail to ap-

list in the order which to him appears best; all cases not disposed of and not specifically continued, are transferred to the next day's list, and so on until disposed of. But a case may be continued to a later time, either by the court of its own motion, or upon request of one or both sides, if either the business of the court, or other actual engagements of attorneys, parties, witnesses, "*Synsmaend*," etc., may demand it. Such continuance must be notified to all parties concerned not then present.

pear without valid cause, the court has the right to interpret such default against the defaulting party.

Where the circumstances of the case demand it, the court may direct one or both parties to produce maps, pedigrees, plans, designs and other such means to elucidate the case, and when such directions are not complied with, the court may interpret the non-compliance against the party guilty thereof.

Should the court, after a case has been submitted, in considering it, find that further information is required in order properly to reach a decision, it may call the parties before it, ask for the required information, receive it then and there, or give the party or parties a short time to produce it. The costs of such resumption are charged to the public treasury until, by the final judgment, it is decided which party ought to bear them.

The court may, of its own motion, continue a trial already going on in the following cases: Where the court opines that dismissal *ex officio* ought to take place; it must first submit this question to the parties; if after argument the case be not dismissed, the trial proceeds. When the case discloses the fact that the proper disposition of the case will depend upon the result of another case pending before the same, or another court, or before an administrative court or commission, the court may continue the case until after final decision in such other case.

The court may, of its own motion, give judgment for the amount admitted to be due. It may also, in other cases, give judgment on any other part or issue in a case, as soon as it shall appear ripe for judgment, even when other parts of the case have to go to trial.

The rules for, and duty of, discovery are very nearly the same as in American equity practice. But, in addition, either party must at the request of the other side, and in certain cases without such motion, prior to the actual trial, be called before the court to give oral explanation of all matters covered by the pleadings, and may appear of his own motion and give such examination. This is something like our calling of the other side for cross-examination prior to his examination in chief, but

under the Danish law he is not considered a witness, nor his declarations as testimony; they form part of the pleadings, or, as the expression is, of the fundament of the case, upon which the trial is to be based.

Costs are fixed in the final judgment and are granted with a definite amount, the court to allow all necessary expenses had and a reasonable amount for counsel fee. Where neither party wins the case, the court must divide the costs between them in equitable proportions. In certain cases security for costs may be required.

The Practice.

Each case is commenced by a summons. The plaintiff prepares it and hands it to the court's clerk. He stamps or writes thereon the day for appearance and returns it to plaintiff for service. In each jurisdiction there are a certain number of official writservers.

The summons must contain the names and addresses of the parties, plaintiff's prayer, a short statement of the facts upon which it is founded, a list of the written instruments, if any, upon which plaintiff will rely, and a command to defendant to appear and answer on the day fixed. On this day plaintiff must appear and file his complaint to the conciliation commission duly served, his summons duly served, and the instruments enumerated in the aforesaid list. In case he defaults, the case must be dismissed at once, and in case defendant appears, he is entitled to costs. If defendant defaults, judgment is given in accordance with the prayer of the summons, unless it or the other papers appear not to set forth a valid cause of action, or not to have been properly served, &c. But the plaintiff may ask for a continuance and give defendant another chance. If defendant appears, but puts in no defence, judgment is given as prayed for (confessed judgment). If the defendant appears to defend, he must then and there file his answer and the written instruments upon which he relies. The answer must specifically state which allegations of plaintiff he denies and which he admits, and a general statement of the facts upon which he bases

his defense. If defendant has any defense *quod formalia* (demurrers) he may plead them separately, reserving his right to answer *quod realia*. Defendant may show that the summons was served with too short notice or otherwise contrary to law, but such showing does not result in a dismissal, but in a continuance for a term long enough to give defendant the legal time in which to answer.

Defendant having filed his answer, plaintiff is granted time to file a replication, and thereupon defendant is entitled to file a duplication, wherewith the written pleadings come to an end, unless the court for special reasons, in exceptional cases, grants leave to file further pleadings.

Amendments may be allowed when the court finds the omissions, &c., excusable.

When the pleadings are in final shape, a meeting is held, in which a day is fixed for the taking of testimony and the production of other evidence, or, for the examination of the parties. If there be no dispute as to facts, a day is fixed for final argument.

Provision is made for the taking at any time of the testimony of going and dying witnesses.

Subpoenas to witnesses are issued by the court. In order to obtain such subpoena, the party must file with the court a written request, stating the number and name of the case, on whose behalf the subpoena is taken out, the names of the witnesses, what it is expected to prove by them, and that it has been ruled by the court that the testimony of witnesses is required. Unless already advised otherwise, the adversary must, at least three days before the trial, be given a copy of this statement.

Each party examines his own witnesses and cross-examines those of the other side. The party having subpoenaed an appearing witness, must call and examine him, unless the other side agrees that he shall not be called. The court is given full powers to examine all witnesses on points not made clear by the examination by the parties.

With a few exceptions, evidence is taken before the court

of first instance of the home jurisdiction of the defendant (or the one to be considered as such). The testimony of the witnesses is not taken down in shorthand, but the substance of each answer of the witness is dictated by the court to the clerk for entry in the minutes, the witness and the parties having the right to make suggestions in order to have the full and correct substance of the answer appear.

The evidence being all in, a day is fixed for the final arguments, or, if the Landret has original jurisdiction, the pleadings exhibits and transcript of the testimony are sent to it, and a day for argument is then fixed there.

On the day fixed, the plaintiff opens his case by making a condensed oral statement of the facts according to the pleadings and minutes; then the clerk reads aloud all documents filed by plaintiff and all the evidence according to the transcript; also all documents filed by defendant, whereupon the plaintiff and defendant make their arguments. The court may stop the case and order one or more of the witnesses recalled for oral examination before itself.

The court must decide all cases as soon as possible. The courts of appeal may fine the inferior courts for unreasonable delays.

All decisions must be accompanied by statements of the reasons moving the court. Decisions are by majority; in case of a tie the vote of the president or, in his absence, that of the eldest judge in point of service, decides. The opinion is written by the president or by the judge whom the president assigns. There are no dissenting opinions filed or published, and it is forbidden to publish anything about the number of votes, or by what judges the decision was reached.

Appeals.

Appeals are of two kinds, called "*Kaere*" and "*Anke*." Generally speaking, *Kaere* is an appeal of interlocutory, *Anke* of final decrees and decisions.

Anke from Landret to Højesteret must be taken within eight weeks; *Kaere* within two weeks. *Anke* always acts as a supersedeas, *Kaere* in specific cases only.

No exceptions need be taken to any ruling of the trial court while the case is going on, but the summons of appeal must contain a full and clear statement of the reasons why the appeal is taken. No case shall be heard on appeal earlier than four weeks after service of the summons of appeal. An appeal by one side acts as an appeal by both, in this that the defendant in error may file with the court a written statement of his objections to the decree appealed from, which then—the case being already before the court—is considered as a cross-appeal by him. The court of review may allow new evidence to be introduced, as well as to include new facts and causes of action, all however under strict regulations. The court itself may hear the new evidence, or order it produced before the proper court of first instance.

The actual procedure in Højesteret upon argument is the same as in the Landretter, in fact this latter was modelled upon the procedure on argument practised in the Supreme Court for over one hundred forty years. No new case must be argued in the Supreme Court until the preceding case has been decided.

Kære is disposed of by a committee of three of the justices, generally on briefs submitted, but the committee or the court may decide or allow that oral arguments take place.

Appeals may be taken from the lower courts to the proper Landret within four weeks after judgment. Such appeals are to a great extent trials *de novo*. Cases originating in the lower courts cannot be appealed to the Supreme Court, but exceptions may be made in cases of exceptional general interest, or where the ultimate consequences of the decision may be of great importance for the party.

Judgments do not give any lien on real estate, and no bonds or other security are required on appeal.

Comparative Observations.

The first thing to note is that the new Danish Code, like so many of the American codes of procedure, goes into the uttermost details. For the purpose of keeping this article within reasonable limits, it has been necessary to leave out mention

of the majority of them; but it is a fact that the code contains specific rules for almost every thinkable contingency. This perhaps has been necessary, as continental systems of procedure have not adopted the English custom of having rules of court, which naturally are much more flexible. But the writer fears that in actual use the system will prove itself cumbersome and a producer of technicalities, even if not nearly to the same extent as the German Code.

On the other hand, there is given the judges a great deal of power in actually directing the course of each case from the beginning to final judgment, especially with a view of getting at the real facts, and of curing defects without having to leave all of the prior steps as so much loss and waste of time and effort. Under the old Danish system, the judge had practically nothing to do with the conduct of the case; he was simply a listener, who finally decided the questions at issue. Naturally, most of the judges of the new courts will be men already on the old bench. It is to be hoped that they will show themselves possessed of the necessary adaptability, and that the new blood coming in will be men with a clear view and distinct ideas about how the law ought to be carried out in practice in order that it may do the most good.

Another great difference from the American system is the division of the trial into two separate parts, the taking of the testimony and the final argument, giving each side as well as the court time to digest the evidence. This may occasionally cause some delay, but probably not very often. Petitions for continuance because one side or the other is not ready, will not be frequent, when it is not necessary, at the same time to have both the *causa probanda* and the *causa probata* at one's finger's end. The final arguments are likely to be both fuller and better, when one is given time to prepare them on the basis of all that has been alleged and proved, than when he must prepare them on the basis of the allegations plus what he hopes to be able to prove, and what he guesses the other side may be able to prove, and then have to revise them *stante pede*, when the

trial shows that his hope or guess, or both, were built on sand. In short, the system eliminates surprises.

The way the code provides for the taking down of the testimony of witnesses ought to prove itself an undisguised blessing. Think of the elimination of the many unnecessary questions, and of the endless reiteration of the same thing over and over again both in questions and answers; of the necessary confining of cross-examination within reasonable and decent limits. As there is no inadmissible testimony, outside of leading questions, there is no necessity for an attorney's asking the same question over and over again, each time in a different way, until he finally succeeds in getting it into a form which will pass the judge, or has to give it up as hopeless.

There will be no waiting for decisions. The Supreme Court cannot take up a new case before it has disposed of the preceding one. The judges commence to vote the moment the advocates have closed, and continue until a decision is reached, and the opinion does not set forth anything but the deciding reason with the shortest possible statement of the facts. There is no review of what the same and other courts may have said on similar occasions since the printing press was invented, or before. In other words, the courts do not consider it to be part of their business to write treatises on law, but to decide the cases which come before them.

The code enjoins the lower and superior courts to decide their cases without delay, and if they do not do it, the Supreme Court will, on appeal, reprove and, in flagrant cases, fine delinquent judges.

One more thing may be mentioned. The salaries of the judges are paid by the state, and there are enough judges appointed to do the judicial work. Masters, examiners, &c., are unknown. Consequently, no litigant has to pay any part of the judges' salaries (outside of his share of the general tax levy). It is not so, that if one sues for an ordinary debt, the state pays the judge's salary, while if another sues his wife for divorce, or asks for a charter, he has to pay it or the fee of the master appointed by the court to do part of its work.

Conclusion.

The code contains detailed rules about execution, distress and sale thereunder, both of personal property and of real estate, about attachment and injunction, about settlement of decedents' and bankrupts' estates, and a whole code of criminal procedure, including how indictments are to be found and how juries are to be selected. But it is impossible to cover all of these matters in the present article.

As it is, the writer is conscious that the foregoing gives a rather imperfect picture of the new code and its mode of procedure, but as he has had before him nothing but the text of the code itself with the tables of contents and indexes, and not a single decision rendered thereunder, the result could not be otherwise.

The new Danish Code preserves the soul of the old Danish system of procedure as in the main a system of equity, but it has striven to drive out the old tendency to petrification, and has not hesitated, for that purpose, to borrow from England, Germany, France and Norway such ideas as have been thought to be of value, and to be adaptable to the historic foundation of the Danish law of procedure as well as to the Danish temperament.

Quod felix faustumque sit!

Axel Teisen.

Philadelphia.